
(2006) 08 OHC CK 0049

In the Orissa High Court

Tarapada Ray, Chapalika Dash, Asutosh Dash and Mohit Das APPELLANT
Vs

State of Orissa and Others RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

ORISSA GOVERNMENT LAND SETTLEMENT ACT, 1962 — Section 119, 3B
Orissa Government Land Settlement Rules, 1983 — Rule 10

Citation : (2007) CLT 612 Supp : (2006) 2 OLR 787

Hon'ble Judges : I. Mahanty, J;A.K. Ganguly, J

Bench : Division Bench

Judgement

A.K. Ganguly, J.—These writ petitions are heard together as the factual position as also the legal problems are similar. As such, all these writ petitions are disposed of by this common judgment.

2. The subject matter of challenge in all these writ petitions is an order passed by the Revenue Divisional Commissioner, Central Division, Cuttack (hereinafter referred to as "RDC") which is a communication dated 9.5.2002. By the said communication, RDC as per the order passed in OGLS Misc Case No. 1 of 2002 cancelled the lease of Government land in Mouza Basuaghai granted in favour of Bhubaneswar Development Authority, opposite party No. 5 (hereinafter called "BDA"). Purported reasons for cancellation of the lease deed is that RDC is not satisfied with the reply to the sho cause given by the Secretary, BDA, as such RDC desired that the land may be resumed by initiating resumption proceedings and necessary action may be taken for initiation of such proceedings.

3. It also appears that pursuant to the said order the Tahasildar, Bhubaneswar was directed to correct the record of the land in favour of the Revenue Department as the lease sanctioned in favour of BDA has been cancelled by the RDC, Cuttack and possession was directed to be taken up after following due procedure. On the basis of that, the Tahasildar gave direction to the Revenue Inspector, Bhubaneswar to take over possession of the land by beat of drum. The said cancellation of lease deed has been challenged by the petitioner o various

grounds. In order to appreciate those grounds the material facts of this case are to be noted and which are as follows:

The land in question, namely, Ac. 1.931 decimals in Plot No. 3 appertaining to Khata No. 393 in Mouza Basughai was given in lease in favour of BDA by virtue of the lease deed dated 29.11.1989. The lease was granted by the Collector, Puri and the lease in question was for a period of 90 years.

4. After the said lease was granted in favour of BDA, the BDA allotted the land to different persons for construction of residential buildings. The same was done by the BDA on or about 8th February, 1990 and the petitioner was granted a plot measuring an area of 5643 sqft. for a period of 90 years. Thereafter the petitioner constructed a building over the said plot of land on the basis of a sanction plan and he has been paying rent since 2003. In the month of September, 2004 the petitioner went to deposit the land revenue for the period of 2004-2005 but the Revenue Authorities refused to accept the same, inter alia, on the ground that RDC has directed resumption of land leased out to BDA in exercise of the powers under Orissa Government Land Settlement Act, 1967 (hereinafter called "OGLS Act".)

5. It appears from the writ petition that prior to the issuance of the order of cancellation of lease deed, a show cause memo was issued to the Secretary, BDA by the RDC, Central Division, Cuttack to the effect that the lease was issued in favour of BDA for construction of market complex. It was alleged in the show cause memo that the land has not been utilized for the purpose for which the lease was sanctioned and BDA had utilized it for residential purposes. It was also alleged in the show cause memo that this amounted to gross violation of the terms and conditions for which the lease was sanctioned. The BDA thereafter was asked to show cause on receipt of the said memo why lease sanctioned in its favour shall not be cancelled and the land be not resumed u/s 3B of OGLS Act, 1962. In answer to the said show cause, the BDA gave a detailed reply. In the said reply the stand of the BDA was that it had utilized the land for commercial as well as for residential purposes and it had taken up the construction of market complex consisting of 28 shops in the area. Therefore, BDA did not violate the provision of the lease agreement. It was also pointed out that the said land under the lease falls within the residential zone as per the provisions of the Orissa Development Authorities Act and in terms of the provisions contained in Section 119 of the said Act, the BDA had used the said land. It was also stated by the BDA that the residential plots were carved out of the lease land and such plots were given to eligible individuals. As such, the BDA requested that the lease given to it should not be cancelled.

6. In this case an affidavit has been filed by the RDC and a separate affidavit has also been filed by the Collector, Khurda and the Tahasildar, Bhubaneswar. In the affidavit filed by the RDC the stand taken is that pursuant to a petition filed by Baragada BRIT Colony Development Association regarding misutilisation of the lease land, the matter was enquired into by the competent authority and it was

found that the BDA had utilized the lease land for residential purpose which was other than the purpose for which it was settled. Consequent upon such finding resumption proceedings were initiated after giving the BDA an opportunity of being heard. It was also stated that in the lease sanctioning order it was stipulated that the lease land would be utilized for the purpose for which it was sanctioned and it cannot be transferred in favour of any person or organization and that premium, annual rent and cess are to be deposited by the BDA and it should execute the lease deed and get it registered at its own cost. It was also stated that in case of violation of the lease terms and conditions, the lease shall stand cancelled and the land along with structures will be resumed without any payment of compensation. It was also stated that Vigilance Enquiry was conducted and from which it disclosed that the land has been utilized by the BDA for residential purpose. It was also alleged that there were some interpolations in the lease deed.

7. In the affidavit, filed in this case on behalf of opposite party Nos. 3 and 4, the stand taken is that BDA made an application in the prescribed form before the Revenue Authority to give them on lease the land in question for construction of a market complex. In support of the said averment the application filed by the BDA has been annexed. It was also stated that on the basis of such application the Revenue Authority processed the file and thereafter the RDC by order dated 6.6.1988 granted sanction of lease of the land in question in favour of BDA and in the sanction order it was mentioned that the land in question will be utilized by opposite party No. 5 (BDA) only for the purpose for which it was leased out. It was also stated in the sanction order that in case Government felt that any terms and conditions of the lease sanction order was violated by BDA, the Government would be at liberty to resume the same without any payment of compensation. A copy of the sanction order has also been annexed. Thereafter the lease deed was executed between the Governor of Orissa and the BDA which was a body corporate u/s 3 of the Orissa Development Authorities Act. It was also admitted in the affidavit that while executing the lease agreement deed due to oversight of the parties some sentences were not struck down. Such sentences are not applicable to the case. It was also stated in the affidavit that BDA had applied for construction of market complex and sanction of lease was accorded on that basis. Therefore, any use of the land other than for the purpose of construction of a market complex is bad in law and the lease deed is therefore rendered null and void. Finding that the BDA has used the land for a purpose other than the purpose mentioned in the lease deed, RDC issued a show cause notice to BDA on 27th August, 1992. Thereafter BDA gave a reply. As the BDA's reply was found to be unsatisfactory, the lease deed was cancelled.

8. These are the rival contentions of the parties. The dispute in this case turns on the question whether the petitioners or the opposite party No. 6 acted in violation of the terms contained in the lease deed. So the lease deed is relevant in this context. It appears that the lease deed was made pursuant to the sanction contained in the order dated 6.6.1988. Despite the reference to the sanction

order, the lease deed allowed the lessee to construct buildings/carving out plots after construction of market complex and for selling or leasing out those plots, houses and shops for residential/commercial purposes in respect of the entire demised land. The relevant clause in the lease deed runs as follows:

(1) In pursuance of the sanction contained in letter No. 2758/Rev., dated 6.6.88 and addressed to the lessee in Memo No. 2759/Rev., dated 6.6.88 of the Revenue Divisional Commissioner, Central Division, Cuttack and in consideration of the premium and rent hereinafter reserved and of the covenants on the part of the lessee hereinafter contained, the lessor hereby demises to the lessee for the purpose of constructing buildings/carving out plots for the Market Complex and for selling or leasing out those plots, houses and shops for residential/commercial purposes, all the Government land measuring Ac. 1.931 dec. (one acre and nine hundred thirty-one decimals) and more particularly described in Schedule hereunder mentioned (hereinafter referred to as "the demised land") TOGETHER WITH ALL RIGHTS, easements and appurtenances whatever belonging to or in any way appurtenant thereto.

The lease deed also contains the following clauses;

(ii) That the lessee shall construct houses or other buildings of such descriptions and dimensions as may be approved by the Bhubaneswar Development Authority, Bhubaneswar in writing within a period of three years from the date of this lease to be sold/leased out to persons selected by B.D.A. as per prescribed procedure and instructions of Government.

9. The lessee has also been given the right to sell or lease out the plots for raising construction. The following stipulations are there in the lease deed;

xxx The lessee shall have the liberty to sell or lease out the house or building constructed/plots carved out by it to the persons selected by B.D.A. as per prescribed procedure and instruction of Government.

The learned Counsel for the petitioner relied on the aforementioned clauses.

10. The learned Counsel for the opposite party Nos. 1 to 4, on the other hand, relied on the following clauses in the lease deed.

That the lessee or his transferee shall not without the consent in writing of the lessor use or permit the use of the said land for any purpose other than that for which it is leased or transfer the same without such consent.

Provided that the restrictions imposed above for transfer of the demised premises without the consent in writing of the lessor shall not apply to transfer made by the Bhubaneswar Development Authority, Bhubaneswar as lessee for the purpose as laid down in Para (ii) above.

11. It is clear from the recital in the lease deed, that the construction of residential building and leasing out the same to the petitioner by BDA is not an act which has been done in violation of the clauses of the lease deed. Any person

who reads the lease deed reasonably will come to the conclusion that clauses in the lease deed permit construction of residential building and leasing out the same by the BDA to other persons. Therefore, construction of residential buildings per se does not amount to violation of the conditions of the lease deed.

12. The learned Counsel for the petitioners has further submitted that the rights between the parties, namely, the lessor and the lessee will be governed by the stipulations in the lease deed and not by the sanction order which was issued on the application for lease by BDA. On the other hand it has been repeatedly urged by the learned Counsel for the opposite party Nos. 1 to 4 that in the application of the lessee the prayer was to grant lease to BDA on the basis that the same will be utilized for construction of market complex. On the basis of such application, sanction was granted by the appropriate authority for lease. Therefore, the rights between the parties will not be governed by the lease deed but the sanction order on the basis of which lease was granted. Apart from saying that it was also sought to be urged by the learned Counsel on the basis of the affidavit filed by the RDC that at the time of execution of the lease deed the BDA has interpolated the name and inserted certain words and in support of the said contention a letter dated 31st July, 1992 from the Additional Secretary to Government addressed to RDC, Central Division, has been annexed. From the said letter it appears that it has been alleged that certain words like "selling or leasing plots, house and shop for residential purpose" have been inserted by way of interpolation. But there is no whisper about who did interpolate ? Along with that letter, another letter has been annexed issued from the Collector, Khurda to the Secretary to RDC, to the effect that in the lease deed there are sentences providing specific purposes for which the leases are generally granted and according to the sanction order the sentences which are not applicable are to be scored out. But in the instant case inapplicable sentences have not been scored out. The stand of the opposite parties is thus quite confusing. On the one hand there is a bald allegation of interpolation of the terms of the lease deed and on the other hand there is a plea of non-striking out of the irrelevant clauses in the lease deed.

13. In the fact of such conflicting stand of the opposite parties the question arises for consideration is whether the lease deed be cancelled by the authorities, once having entered into the same, which contains clear terms authorizing BDA for construction of residential buildings. From the affidavit of the opposite parties it is clear that the authorities are proceeding under Orissa Government Land Settlement Act.

14. Under the OGLS Act, Rules have been framed u/s 8-A. In the instant case the BDA-the lessor is a body corporate under Section-3 of the Orissa Development Authorities Act. It is also not in dispute that the lease has been granted by the Government in exercise of its powers u/s 3 of OGLS Act. Therefore, in connection with such lease the provision of Rule 10 of Orissa Government Land Settlement Act, 1983 will come into play. The said Rule is as follows;

10. Terms and conditions of settlement- Terms and conditions of the settlement of lands for purposes other than agriculture, both in rural and urban areas, shall be such as may be determined by the Government from time to time.

15. A perusal of the said Rule makes it clear that terms and conditions for settlement of lands for purposes other than agriculture, both in rural and urban areas, shall be such as it may be determined by the Government from time to time. In the instant case the Government has determined the terms and conditions of such settlement of land by incorporating various conditions in the said lease deed. Therefore, the rights of the parties will be governed by the said lease deed after the said lease deed has been entered into by the parties and the same is a registered lease.

16. It is trite la that once the lease has been granted the rights of the parties will be determined by the lease deed and it cannot be governed by any position prior to the said lease deed unless the deed contains stipulations to that effect. In fact no condition for settlement of land was ever arrived at between the parties prior to the lease deed. In the instant case since the condition of the lease deed has not been violated, the cancellation of the lease by the opposite parties on the ground of alleged breach of the norms of the lease deed is not sustainable in law. It may be noted here that both the market complex as well as residential complex have been constructed by the BDA. Construction of such residential complex is permissible in vie of the condition of the lease deed as pointed out above. In this connection reference may be made to the decision of the Supreme Court in the case of Delhi Development Authority Vs. Durga Chand Kaushish, . The question which arose in that case was about the lawful manner of construction of a document. The learned Judges of the Supreme Court came to the conclusion that in construing document one must have regard, not to the presumed intention of the parties but to the meaning of the words they have used. The same principle applies to the facts of this case. In the instant case the lease deed clearly stipulates that the BDA can construct residential premises or allow individuals to construct residential premises. In vie of the clear recital in the lease deed the alleged plea raised by the opposite parties that they wanted to strike down from the lease deed some portions which are not relevant does not hold any water. Apart from that, the other plea taken by the opposite parties is that there have been interpolation in the lease deed. Such pleas taken at the stage of filing of the affidavit cannot be sustained. As pointed out above the said plea is inconsistent with the plea of not striking down the relevant clauses. The opposite parties in desperation have taken all kinds of pleas and it is obvious that one plea runs counter to the other.

17. This Court is of the opinion that none of the pleas can be sustained in vie of the clear recitals in the lease deed. This Court is, therefore, of the opinion that the ratio in the case of Delhi Development Authority (supra) should govern the case, namely, that the lease deed in question must be construed on the basis of the recitals in the lease deed. Such construction is also consistent with Rule 10 of

the Rules which have been referred to above.

18. In the case of *Martin Cashing and Ors. v. Peter J. Cashing* reported in AIR 1938 PC 103 the question of construction of a deed came up for consideration. Lord Maugham speaking for a Five Judge Bench of the Privy Council laid down the principle of such constructions as follows:

Their Lordships wish to add that in a case where the person executing the deed is neither blind nor illiterate, where no fraudulent misrepresentation is made to him, where he has ample opportunity of reading the deed and such knowledge of its purport that the plea of non est factum is not open to him, it is quite immaterial whether he reads the deed or not. He is bound by the deed because it operates as a conclusive bar against him-not because he has read it or understands it, but because he has chosen to execute it.

Following this clear ratio this Court holds that plea of the opposite parties of not adhering to the terms of the lease are specious pleas and cannot be upheld by a Court of law.

19. Apart from that a Division Bench of this Court in a recent decision rendered in the case of *Krushna Chandra Panda and Anr. v. State of Orissa and Ors.*, reported in 2006 (I) OLR 1 has held that in a case of resumption of lease, notice to the affected person is a requirement of natural justice even though u/s 3-B of Orissa Government Land Settlement Act, 1962, that is not a statutory requirement. Here no notice has been given to the private parties who will be affected. So the impugned cancellation of lease and the consequent resumption of land cannot also be sustained in view of the judgment in *Krushna Chandra Panda (supra)*.

20. Apart from that in the impugned order of cancellation of lease deed none of the pleas taken by the opposite parties in their affidavit have been mentioned. It is a well settled principle of law that a public order publicly made will either stand or fall on the basis of the reasons expressed in the order. The reasons given in the order cannot be subsequently supplemented by affidavit. Reference in this connection may be made to the decision of the Supreme Court in the case of *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, (See para-8) and in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, (See para-9).

21. The learned Counsel for the opposite parties has relied on a few judgments of the Supreme Court in support of their argument. The judgment on which reliance was first placed was rendered in the case of *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, . Reliance was placed on paragraph-9. The learned Judges have discussed as to the mode of construction of a lease deed in paragraph-9. It has been stated that best interpretation of a contract is made by reading the context. In that judgment the learned Judges relied on the judgment in the case of *North Eastern Railway v. Hastings* reported in 1900 AC 260. Relying on the said judgment the learned Judges held that the deed must be

read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with the other provisions of the deed if that interpretation does no violence to the meaning of which they are naturally susceptible. The learned Judges held that if the words are clear, there is very little that the Court can do about it. In the judgment the learned Judges held that if the meaning of the words is doubtful in that case the circumstances surrounding their creation should be construed for ascertaining the meaning.

In the instant case the meaning of the clauses in the lease deed are very clear and do not admit of any ambiguity. Therefore, in order to understand the intention of the parties only the clauses in the lease deeds need be construed. Considering the lease deed in the aforesaid fashion, the Court does not find any reason to hold that construction of residential premises by the BDA or the party to whom it has further leased out a portion of the land is either illegal or in breach of the lease deed. As a matter fact, the judgment in the case of Provash Chandra Dalui (supra) instead of supporting the contention of learned Counsel for the opposite parties contradicts his argument.

The other judgment on which reliance was placed was in the case of Union of India and others Vs. Hindustan Development Corpn. and others, . This Court fails to understand the relevance of the ratio in the said case to the facts of the present case. The decision in the case of Hindustan Development Corporation (supra) was on the question of the Governments" right to accept the lowest offer in a tendering process. It has also taken into consideration the Government policy in price fixation. In that context, the question of legitimate expectation came to be considered. The learned Judges gave a reasoned judgment on the question of legitimate expectation. In the instant case those questions are totally absent. Therefore, the reliance on the decision in the case of Hindustan Development Corporation (supra) is wholly inappropriate in the facts of the present case.

For the reasons discussed above, this Court, therefore, finds that the cancellation of the lease deed by the opposite parties cannot be sustained.

This Court, therefore, quashes the order of cancellation of lease deed at Annexure-3 and also quashes consequential orders at Annexures-4 and 5 in each of the petitions. The writ petitions are, therefore, allowed to the extent indicated above.

I. Mahanty, J.

I agree.